

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

In re: GUIDANT CORP. IMPLANTABLE
DEFIBRILLATORS PRODUCTS
LIABILITY LITIGATION

MDL No. 05-1708 (DWF/AJB)

This Document Relates to ALL ACTIONS

PRETRIAL ORDER NO. 14

PLAINTIFF'S FACT SHEET:
MEDICAL HISTORY RECORDS AND AUTHORIZATIONS

The Court entered Pretrial Order No. 2 on January 6, 2006. At paragraph 24 of that Order, the Court approved the Plaintiff's Fact Sheet that was attached to the Order of January 6, 2006, as Attachment E. The Court entered a subsequent Order on March 22, 2006, pursuant to an agreement of the parties, which simply, but importantly, deleted the word "oral" from the authorization of contact by Defendants to Plaintiffs' treating physicians. In all other respects, Plaintiff's Fact Sheet remained the same. On May 19, 2006, the Court entered an Order that stated at paragraph 3:

Plaintiffs will have until 5:00 p.m. on May 30, 2006, to present their twenty proposed representative cases to Guidant. For each case selected by Plaintiffs, consistent with prior orders of this Court, properly completed Plaintiffs' fact sheets, along with any medical records and any medical authorizations, must be provided. Plaintiffs may not limit the healthcare providers from whom Defendants can obtain records. Nor may Plaintiffs restrict the periods of time from which records may be obtained.

At that time, neither party raised an issue concerning a 10-year limit on medical documents, medical authorizations, or releases. Plaintiffs now assert that the medical

authorizations should be limited to a period of 10 years. The Defendants, in turn, assert that the 10-year limitation only applies to healthcare providers. The Court agreed to review the procedural history of the file, along with the arguments of counsel, and enter an Order to resolve this issue.

Based upon the presentations of the parties, the Court having reviewed the procedural history of the file, and the Court being otherwise duly advised in the premises, the Court hereby enters the following:

ORDER

1. Medical authorizations required by Plaintiffs' fact sheets shall be subject to a 10-year limitation with the following qualifications:

a. The parties shall be proactive in examining each Plaintiff's Fact Sheet so that in those situations where there is a reasonable basis for extending discovery beyond the 10-year period, that will occur without delay or Court involvement;

b. In cases where the Plaintiff consulted with a doctor or other medical professional or healthcare provider regarding an implant or explant issue prior to the 10-year period, the 10-year limitation shall not apply; and

c. In cases where the information provided within the 10-year period makes it reasonably apparent that the mental, emotional, or physical health of the Plaintiff beyond the 10-year period will be probative of the issues in the case, the 10-year limitation shall not apply.

2. Plaintiffs and Defendants shall handle the issues noted above in a reasonable but expeditious manner so that all discovery timetables and deadlines are met, consistent with the scheduling orders issued in this case.

Dated: June 16, 2006

s/Donovan W. Frank
DONOVAN W. FRANK
Judge of United States District Court

MEMORANDUM

Plaintiffs assert, in good faith, that at the time the Plaintiff's Fact Sheet was negotiated and incorporated into the negotiations, there was a 10-year limitation on the provision of the health provider names. Plaintiffs also assert that, at the same time, it was understood between the parties that the medical authorizations were to be limited to the same 10-year period. Conversely, the Defendants take the position that the 10-year period was intended only to apply to the specific provision of the names of the providers and that Guidant is therefore entitled to all medical records, regardless of the age of the medical record, from every Plaintiff. Contrary, perhaps, to the view of both parties, one size does not fit all. A fair resolution of this matter is somewhere in between what has been suggested by Plaintiffs and Defendants, irrespective of what was intended by either.

The Plaintiff's Fact Sheet does not provide the answer to either party. Paragraph IV, entitled "Implant - Explant Information," found on page 6 of the Plaintiff's Fact Sheet, has no 10-year limitation with respect to the information sought in that subsection of Plaintiff's Fact Sheet. Consequently, one could conclude that in the event there was

consultation by Plaintiff with another individual, and in the event there was an implant or explant sought subsequent to the 10 year period, it is, of course, covered by the Plaintiff's Fact Sheet. In paragraph V of the Plaintiff's Fact Sheet, entitled "Your Medical History," beginning at page 10, the first reference to a 10-year period relates to any tests that were done involving electrophysiology study and cardiac catheterization. Paragraph VI, entitled "Other Medical Information," at A.1-38, found at pages 11-13 of Plaintiff's Fact Sheet, contains no explicit reference to a 10-year limitation. Paragraph VI.B., which asks the following question, "[i]f you responded yes to any of the above, please identify the condition, the date of onset and state the name of the physician or other person and, if not provided in the accompanying list, the address of the physician who made the diagnosis or informed you of the condition," contains no explicit reference to a 10-year limitation. Yet, paragraph VI.D., which states, "[s]tate the name and address of each of your family/primary care physicians going back 10 years," does have an explicit reference to 10 years, as do paragraphs VI.F, G, and H. To that extent, both parties are, in part, correct.

Page 17 of Plaintiff's Fact Sheet, entitled "Document Request," has a 10-year explicit reference at paragraph 7: "All documents referring to or relating to your medical history over the past ten years, including, but not limited to, medical records." Paragraph 10 also has an explicit reference to 10 years with respect to bodily injury claims resulting in requests for disability "from the Social Security Administration, any workers' compensation agency, or any disability insurer concerning any disability

claim . . . made during the past ten years.” Finally, paragraph 12 states, “[a]uthorizations for the release of [sic] medical, employment, insurance and disability records for those entities identified in the above responses.” Paragraph 12, when read in context, regardless of what was intended in good faith by the parties, could be read to include a 10-year limitation, or could be read to not be limited by a 10-year limitation.

The Court perhaps could have dispensed with this Memorandum because the Court is confident that the parties will proceed in a reasonable and proactive manner so that this issue becomes a non-issue. In the end, it is the Court’s view that this Order is consistent with Plaintiff’s Fact Sheet and will be fair without being unnecessarily burdensome to individual Plaintiffs or to the Defendants.

D.W.F.